IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

OP.No. 26935 of 1999(F)

PETITIONERS:
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1. **BABU, S/O. MANI,**
   KAYARADI, AYALUR VILLAGE,
   CHITTUR TALUK.

2. **RAJAN, S/O. MANI, KAYARADI,**
   AYALUR VILLAGE, CHITTUR TALUK.

3. **GIRIJA, D/O. MANI, KAYARADI,**
   AYALUR VILLAGE, CHITTUR TALUK.

BY ADV. SRI.H.BADARUDDIN

RESPONDENTS:
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1. **THE SECRETARY, CHITTUR PRIMARY CO-OP AGRI & RURAL**
   DEV. BANK LTD. NO. P. 619, CHITTUR TALUK, CHITTUR, PALAKKAD.

2. **THE SALE OFFICER, -DO- -DO-**

3. **THE JOINT REGISTRAR, PALAKKAD DIST. CO-OP SOCIETIES,**
   PALAKKAD.

4. **THE ASST. REGISRAR GENERAL, CO-OP SOCIETIES,**
   CHITTUR.

5. **THANKA, W/O. KITTU, ONNURPALLAM**
   MUTHALAMADA AMSOM, CHITTUR.

6. **CHANDRAN, S/O. KITTU, -DO-**

7. **SHANTHA W/O. SUDEVAN & D/O. KITTU,**
   MADATHANARA, VADAVANNUR, CHITTUR TALUK.

8. **MADHAVAN, S/O. KITTU, OONNURPALLAM,**
   MUTHALAMADA AMSOM, CHITTUR TALUK.

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OP NO. 26935/1999

9. LATHA W/O. RADHAKRISHNAN, NARANKUZHI, CHITTUR TALUK & VILLAGE.

10. SUDHA W/O. MOHANAN & D/O. KITTU, UPPUMANPADI, KUTTIPALLAM, CHITTUR TALUK.

BY ADV. SRI.GEORGE POONTHOTTAM

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 11/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

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OP NO. 26935/1999 F.

ORDER ON CMP NO. 45560/1999 IN OP NO. 26935/1999 F.

DISMISSED

11/09/2007. **SD/- THOTTATHIL B.RADHAKRISHNAN, JUDGE.**

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE SALE PROCLAMATION BY THE R2 FOR REALISATION OF THE DUES ON LOAN NO. HR 120.

EXT.P2. COPY OF THE PLAINT IN RESPECT PARTITION SUIT OS NO. 321/98 PENDING BEFORE THE SUB COURT, PALAKKAD DT. 28/10/98.

RESPONDENT'S EXHIBITS **NIL.**

True copy

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THOTTATHIL B.RADHAKRISHNAN, J.

O.P.No.26935 OF 1999

Dated this the 11th day of September, 2007

JUDGMENT

Service not complete. None appears. Yet the matter considered on merits.

2. Petitioners claimed to be co-owners of an extent of land, which is covered by proceedings under the Kerala State Co-operative Agricultural Development Bank act, 1984 for realisation of outstandings by public auction. It appears that the outstandings are sought to be realised from the mortgaged property.

3. The plea of the petitioners is that there is a suit for partition pending and that the particulars of succession would have an impact on the liability of the property to be put to sale. If any person had any claim in relation to the hypothication, it had to be agitated during the sale proceedings and it would not be a

matter to be agitated in a writ petition. Mere pendency of a suit for partition does not stand in the way because if the property has been mortgaged by a co-owner, the liability has to be regulated accordingly.

The writ petition fails. The same is accordingly dismissed.

Sd/-

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.

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THOTTATHIL B. RADHAKRISHNAN, J

O.P.NO.26935 OF 1999

JUDGMENT

11th SEPTEMBER, 2007.

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